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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

SADO LABTIS,

Plaintiff and Appellant,

v.

CITIMORTGAGE et al.,

Defendants and Respondents.

H037248

(Santa Clara County

Super. Ct. No. CV202622)

**I. INTRODUCTION**

Appellant Sado Labtis, a self-represented litigant, filed an action against respondents CitiMortgage, Inc. (CitiMortgage) and CR Title Services, Inc. (CR Title Services; hereafter, sometimes collectively CitiMortgage) in which she sought to prevent the foreclosure of her townhome in Sunnyvale. The trial court denied Labtis's request for a preliminary injunction staying the trustee's sale during the pendency of the action, sustained CitiMortgage's demurrer to the first amended complaint without leave to amend, and entered a judgment of dismissal.

On appeal, we understand Labtis to contend for a number of reasons that the trial court erred in denying her request for a preliminary injunction. CitiMortgage argues that all of Labtis's contentions lack merit and, in any event, the appeal is moot. For the reasons stated below, we agree that the appeal is moot. Accordingly, we will dismiss the appeal without reaching the merits.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

Labtis financed the 1988 purchase of her Sunnyvale townhome by borrowing \$84,800 from First Nationwide Bank. The mortgage loan was secured by a deed of trust on the property. CitiMortgage states that it is “successor in interest by merger to First Nationwide Bank and is the current beneficiary under the Deed of Trust. [CR Title Services] is the current trustee of the Deed of Trust.”

In January 2011, CitiMortgage initiated foreclosure proceedings on Labtis’s townhome by filing a notice of default and election to sell under deed of trust. The notice of default stated that Labtis was past due in her mortgage payments in the total amount of \$17,220.98. The record reflects that Labtis did not cure the default and in May 2011 CitiMortgage filed a notice of trustee’s sale, which stated that Labtis’s townhome would be sold on June 13, 2011.

On June 9, 2011, Labtis challenged the trustee’s sale by filing a collection of documents, including an ex parte request for a temporary restraining order, that the trial court deemed to constitute a complaint naming CitiMortgage and CR Title Services as defendants. The trial court issued a temporary restraining order staying the trustee’s sale and an order to show cause why a preliminary injunction should not issue during the pendency of the action.

After holding a hearing on the order to show cause, the trial court issued its July 13, 2011 order denying Labtis’s request for a preliminary injunction and vacating the temporary restraining order. The court found that Labtis had failed to meet her burden to establish by competent evidence that she is likely to prevail at trial or that monetary damages would be insufficient.

On November 18, 2011, CitiMortgage filed a notice of rescission of its notice of default and election to sell. There is no indication in the record that a trustee’s sale is currently pending.

In the meantime, CitiMortgage had filed a demurrer to the complaint, which the trial court sustained with leave to amend in its order of December 8, 2011. Labtis then filed a collection of documents entitled “REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF RESPONSE TO TENTATIVE RULING AND OPPOSITION TO DEFENDANT’S DEMURRER,” which the trial court deemed to constitute her first amended complaint. CitiMortgage responded to the first amended complaint by filing a demurrer, which the trial court sustained without leave to amend on April 17, 2012. A judgment of dismissal in CitiMortgage’s favor was entered on April 27, 2012, followed by the May 1, 2012 notice of entry of judgment of dismissal.

On August 12, 2011, Labtis filed a notice of appeal from the July 13, 2011 order denying her request for a preliminary injunction. As reflected in the record, she did not file a notice of appeal from the judgment of dismissal.

### **III. DISCUSSION**

We understand Labtis to argue on appeal that the trial court abused its discretion in denying her request for a preliminary injunction staying the trustee’s sale because, among other things, CitiMortgage made several errors during the foreclosure proceedings.

CitiMortgage requests that the appeal be dismissed on the ground that the appeal is moot. According to CitiMortgage, the appeal is moot because the trial court sustained the demurrer to the first amended complaint without leave to amend, and since the complaint fails to state a cause of action, a preliminary injunction cannot issue. Alternatively, CitiMortgage argues that the trial court did not err in denying the application for a preliminary injunction because Labtis failed to demonstrate a reasonable probability that she would prevail on the merits.

We agree with CitiMortgage that the appeal is moot. The general rule is that “[a]n appeal should be dismissed as moot when the occurrence of events renders it impossible for the appellate court to grant appellant any effective relief. [Citation.]” (*Cucamongans United for Reasonable Expansion v. City of Rancho Cucamonga* (2000) 82 Cal.App.4th

473, 479 (*Cucamongans*); see also *MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 214.) As we will explain, the entry of the judgment of dismissal in this case is an event that precludes appellate relief from the trial court's order denying Labtis's request for a preliminary injunction.

It is well established that “ ‘[a] preliminary injunction is an interim remedy designed to maintain the status quo pending a decision on the merits. [Citation.] It is not, in itself, a cause of action. Thus, a cause of action must exist before injunctive relief may be granted. [Citation.]’ ” (*Korean American Legal Advocacy Foundation* (1994) 23 Cal.App.4th 376, 398-399.) Where, as here, a judgment of dismissal has been entered in the underlying action after a demurrer was sustained without leave to amend, and therefore no cause of action remains to support a temporary restraining order or a preliminary injunction, “the question of the right to interim relief [is] moot.” (*Agnew v. City of Los Angeles* (1958) 51 Cal.2d 1, 2 (*Agnew*); see also *MaJor v. Miraverde Homeowners Assn.* (1992) 7 Cal.App.4th 618, 623.) After the right to injunctive relief is rendered moot by the entry of a judgment of dismissal in the underlying action, an appeal of an order denying injunctive relief must be dismissed as moot. (*Agnew, supra*, at p. 2.)

However, the appellate court has the inherent power to retain a moot appeal under three discretionary exceptions: (1) the case presents an issue of broad public interest that is likely to recur; (2) the parties' controversy may recur; and (3) “a material question remains for the court's determination [citation].” (*Cucamongans, supra*, 82 Cal.App.4th at p. 480.)

In the present case, the underlying action has been dismissed in its entirety. Consequently, no cause of action remains to support Labtis's request for a preliminary injunction and the issue of whether she is entitled to injunctive relief is moot. Labtis's appeal of the order denying her application for injunctive relief is therefore also moot. (*Agnew, supra*, 51 Cal.2d at p. 2.) In addition, having carefully reviewed the parties' briefs and the record in this matter, we determine that no discretionary exception applies

that would allow this court to retain the moot appeal. For these reasons, we will dismiss the appeal as moot.

#### **IV. DISPOSITION**

The appeal is dismissed as moot.

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BAMATTRE-MANOUKIAN, J.

WE CONCUR:

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ELIA, ACTING P.J.

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MÁRQUEZ, J.